



December 10, 2018

Ms. Samantha Deshommes, Chief
Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Re: DHS Docket No. USCIS-2010-0012, RIN 1615-AA22, Comments in Response to Proposed Rulemaking: Inadmissibility on Public Charge Grounds

Dear Chief Deshommes:

The Home Care Association of New York State (HCA) appreciates the opportunity to comment on the U.S. Department of Homeland Security's (DHS) proposed rule on the inadmissibility on "Public Charge" Grounds, which, in essence, would limit or deny permanent legal status to immigrants – including many working or served by the home care field – if they rely on a wide range of government services, such as Medicaid, food assistance, and housing assistance.

HCA is a statewide association representing nearly 400 health care providers, organizations and individuals involved in the delivery of home care services to over 300,000 Medicare and Medicaid patients in New York State. HCA's members include home care and hospice programs as well as managed long term care plans and other entities that manage or deliver home and community based services to this medically vulnerable population.

HCA's member organizations provide critical in-home services to individuals throughout New York State. Most of these organizations each employ hundreds – and, in some cases, thousands – of individuals in the following professions: registered and licensed practice nurses; physical, occupational and speech therapists; home health aides and personal care aides; and social workers. These professionals and paraprofessionals provide direct patient care, care management, transitions, medical management, medication reconciliation, and other services that are critical to keeping our several hundred thousand patients out of much more expensive long term care facilities and hospitals and in their own homes.

Many of the individuals working in the home care field – up to a quarter, by one estimate – are immigrants. Nearly half rely on some form of publicly funded assistance, according to the Paraprofessional Healthcare Institute (PHI). In many regions of the state and country, these extraordinarily dedicated individuals and the patients who rely on their services would be significantly affected by DHS's proposal to change the federal "public charge" policies.

Of greatest concern, this change in "public charge" policy would cast a shadow on the prospects for many in the home care workforce to continue serving the medical, supportive and assistive needs of patients under the state's Medicaid program, and statistics show that an access-to-care crisis would

almost certainly result, especially at a time when the public is increasingly relying on home care and when workforce shortages have already overburdened the home care system.

To put this in perspective, the Centers for Health Workforce Studies (CHWS) is estimating that the New York home care workforce must increase by approximately 40 percent to meet the expected need projected in 2024, especially with the aging of our population. By 2050, the population of people 65 and older will nearly double nationally, from 47.8 million in 2015 to a projected 88 million in 2050 (data also provided by U.S. Census Bureau).

Given these future needs, the shortages that already exist in home care and the constricting effect that this policy will have on a major segment of the existing home care workforce, HCA respectfully requests and recommends that individuals seeking employment or employed as home health aides or personal care aides be “**exempt**” from this proposed requirement.

Immigrants working in Home Care: NYS and National Statistics

According to a report by PHI, over 2.1 million home care workers provide home health aide and personal care aide assistance to older adults and people with disabilities in their homes and in community-based settings across the U.S. Over 300,000 of these individuals are employed in New York State and one in four plays a vital role in the home care workforce. Nationally, according to PHI and the Bureau of Labor Statistics (BLS), over 525,000 immigrants work in home care.

These statistics are further buttressed by a just-released study published in the *Journal of the American Medical Association* earlier this month which found that more than 23 percent of home health, psychiatric, and nursing aides were born outside the U.S.

New York is among the five states with the highest percentages of immigrant home care workers. Immigrants comprise over 40 percent of New York’s home care workforce, although this percentage can vary widely by service area, and any immigration policy change can have a disproportionately destabilizing impact on a region-by-region basis. For instance, HCA’s largest provider member, the Visiting Nurse Service of New York (VNSNY) in New York City, reports that 66 percent of its more than 13,000 home health and personal care aides are immigrants.

Health Care Quality, Access and Billions of Dollars in Cost Savings Hinge on Cultural and Linguistic Alignment Between Patients and their Health Professionals

Home care provides a vital employment opportunity for immigrants and a necessary service for home care recipients, especially in communities where the patients themselves are immigrants and rely on aides or other caregivers who speak their language, can best gather an accurate understanding of the patients’ needs, and are able to effectively communicate treatment plans and other vital protocols in a culturally-sensitive way. Billions of dollars are lost annually in the U.S. when there is a lack of culturally competent care and health disparities ensue. This problem will be exponentially exacerbated if working immigrants, able to care for individuals with cultural and linguistic effectiveness, are diminished in the workforce.

Low Government Rates Reimbursing Home Care Drive Reliance on Publicly Funded Benefits for Immigrants and Other Home Care Workers

Because home care services are almost exclusively covered by public programs like Medicaid and Medicare (by about 90 percent here in New York), wage pressures from state and federal government reimbursement rate shortfalls have resulted in wage stagnation and a labor environment where over half of all home care workers rely on some form of public benefit, including the 40 percent of New York home care workers who are immigrants and would have their immigration status imperiled by DHS's proposal because they might rely on public funds of one type or another.

According to our home care provider members, the major reasons for home care agency cost pressures are: 1) wages and overtime; 2) benefits; and 3) the costs associated with recruitment and turnover of their workforce. For virtually all of these areas, the state and federal reimbursement methods to fund the vast majority of home care services through Medicaid and Medicare have not kept pace with: an increasing minimum wage and state wage parity laws here in New York; federal Fair Labor Standards Act (FLSA) overtime cost changes; increasing health care and benefits costs; regulatory compliance costs; and other administrative costs. As a result, nearly 75 percent of certified home health agencies are expected to report negative operating margins in 2017, due in large part to government rate shortfalls and pressures that have an effect on wage adequacy and the resultant workforce reliance on public benefits.

PHI reports that 67 percent of non-citizen, immigrant home care workers access Medicaid and 57 percent access food and nutrition assistance. DHS's proposal generally would establish cash-value-based thresholds for use of public benefits like these to determine an individual to be a "public charge" with consequences for their immigration status. However, in the case of Medicaid or other benefits that are not easily translatable into a cash value, the threshold would be receipt of the benefit for 12 months within a 36-month period or 9 months if an individual receives both types of benefits (i.e., those with a cash value and those without a cash value).

Making an Existing Workforce Crisis Worse

Given the nature of DHS's proposal, the heavy reliance of home care workers on public benefits (especially Medicaid) and the significant share of home care workers who are immigrants as outlined previously, it is hard to imagine how the home care industry would ensure adequate supports to clients around the country and in New York without an exemption for home care as HCA requests.

If the proposed rule makes it even harder for immigrants to fulfill these roles, or face deportation and instability in their long-term immigration status, home care clients will suffer, as will family caregivers, who rely on workers to provide respite and professional support. Further, if family caregivers cannot access direct care workers, their financial situation will worsen, and the economy will suffer. Moreover, the entire health care system will suffer as hospitals, high complex medical services and federal-state long term care policies are extremely reliant on home care to cover access and gaps that keep the system functioning, and keep costs *much lower*.

While the need for home care workers will continue to increase, widespread instability in this workforce makes it already challenging to meet existing demand – even absent a change in policy, like DHS's, that would constrict an already overburdened workforce.

As it is, home care providers nationally and in New York experience high staff turnover and shortages. On average, home care agencies in HCA's membership report 11.6 percent of jobs are already unfilled for home health aides and 10.2 percent of jobs are unfilled for personal care aides. Average home health aide turnover rates are 24.80 percent, according to HCA's members.

High turnover and shortages are functionally disruptive, and they jeopardize access to services. With the recruitment of new staff, home care providers also end up bearing extra costs for retraining, orientation and supervisory activities. Staff vacancies often mean that organizations cannot accept cases, which is disruptive to patient care needs.

This is already a concerning reality which is close to spiraling into a crisis. DHS's proposed rule would likely worsen an already delicate balance of workforce supply and availability, access-to-care and other pressures on the home care system that cannot be absorbed.

Conclusion

This proposed rule penalizes hard-working immigrants that are providing critically important and cost-effective home health services simply because many of these individuals must access public benefits, while ironically, these very workers are critical to holding down and preventing spending in public health care program throughout the country!

Indeed, this reliance on public benefits is due in large part to funding inadequacies emanating from the administration of these very same programs under which home care workers are employed to support all individuals living in the US: native-born citizens, naturalized citizens and those seeking long term immigration status.

Further, the ability to enroll in Medicaid enables many home care workers to find and retain employment, decrease reliance on cash assistance, save more and contribute more to the local economy and achieve financial stability. These services are essential in also reducing overall health care expenditures and improving outcomes.

For these reason detailed in the comments above, HCA respectfully requests and recommends that DHS **exempt** individuals from this newly proposed requirement if they are seeking employment or are employed as home health aides or personal care aides.

HCA appreciates this opportunity to submit comments on the proposed rulemaking. I would be pleased to answer any questions or assist DHS staff in any way going forward and can be contacted at pconole@hcanys.org or (518) 810-0661.

Sincerely,



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